

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 450-46-9887 D3
ISSUED TO: ALLEN JETER

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2374

ALLEN JETER

This appeal has been taken in accordance with Title 46 U.S.C. 7702 (b) and 46 CFR 5.30-1. By order dated 27 July 1983, an Administrative Law Judge of the United States Coast Guard at Houston, Texas revoked Appellant's seaman's document upon finding proved the charge of misconduct. The specification found proved alleges that while serving as fleet chef aboard the SS EXXON SAN FRANCISCO, under the authority of the document above captioned, on or about 24 December 1981, while the vessel was at sea, Appellant did wrongfully rape a crew member of the vessel, namely, Robin Casson.

The hearing was held at Houston, Texas 14 December 1982, 22 and 24 January 1983, 9 February 1983 and 13 and 15 April 1983. At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence the testimony of three witnesses, transcripts of depositions of six additional witnesses, and seven other exhibits.

In defense, Appellant offered in evidence his own testimony, the testimony of two additional witnesses, transcripts of depositions of four witnesses, and three other exhibits.

Subsequent to the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Decision and Order revoking Appellant's seaman's document was served on 6 August 1983. Notice of appeal was timely filed on 25 August 1983, and perfected 15 June 1984.

FINDINGS OF FACT

On 24 December 1981, Appellant was serving as fleet chef aboard the SS EXXON SAN FRANCISCO under the authority of his merchant mariner's document. On 24 December 1981, the date of the alleged violation, the vessel was at sea approaching the port of Los Angeles - Long Beach, California. Since it was Christmas Eve,

according to shipboard policy, the crew was given a small amount of wine with the noontime meal. After lunch, Appellant and several other crew members, including Ms. Robin Casson, remained in the crew lounge talking and drinking more wine which was left over from the meal.

At about 1500, the third mate on the vessel invited Ms. Casson and another crew member to come to his room later. At about 1600, Ms. Casson and the other crew member went up one deck to the third mate's room. The other crew member left the room about 1730 or 1800. At about 1930, the third mate was called for duty on the bridge for the 2000 to 2400 watch. Ms. Casson remained in the room, sleeping unclothed in the room's single bunk.

Between the hours of about 2020 and 2045, Ms. Casson awoke as she was being raped. She pulled away from her assailant, who then placed his hands on her thighs and attempted to pull her towards him. She managed to pull away a second time. Ms. Casson identified her attacker as Appellant. In a highly nervous, upset, emotional state, Ms. Casson went to the bridge, then to the Chief Engineer's office, where she reported the incident to the Chief Engineer and then to the Master. The Master conducted an investigation during the course of which he questioned Appellant. Appellant denied having committed the offense. Company officials also investigated the incident. Ms. Casson subsequently received individual and group counselling by a rape counselling service.

BASES OF APPEAL

This appeal has been taken from the Decision and Order of the Administrative Law Judge. Appellant contends that the Administrative Law Judge erred in reaching his decision because Appellant was not informed of his Constitutional right to remain silent during the questioning by the Master of the SS EXXON SAN FRANCISCO and other Exxon officials, or of his right to have an attorney present and to terminate the questioning. This, contends Appellant, denied him the right to be effectively represented by counsel during his questioning.

OPINION

Appellant contends that the Administrative Law Judge erred in finding the charge and specification proved because Appellant was not given the proper warnings during questioning by the Master of the SS EXXON SAN FRANCISCO and other Exxon officials. This argument is without merit.

The warnings which Appellant contends should have been given

were enunciated by the U.S. Supreme Court in Miranda v. Arizona, 384 U.S. 436 (1966). The Miranda rule prohibits use in criminal trials of statements unlawfully obtained by law enforcement officers.

Suspension and revocation proceedings are not criminal trials. Appeal Decisions No. 1847 (SPERLING) and No. 2029 (CHAPMAN). In this case, any statements Appellant may have made were neither obtained by law enforcement officers nor used in the Coast Guard's case before the Administrative Law Judge. The evidence that Appellant committed the rape was developed as the result of the testimony of other witnesses, most notably the victim. No question as to any statement made by Appellant has been raised. Miranda is inapplicable. Appeal Decision No. 1789 (DAVIS).

CONCLUSION

There is substantial evidence of reliable and probative character to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with applicable regulations.

ORDER

The order of the Administrative Law Judge, dated 27 July 1983 at Houston, Texas, is AFFIRMED.

J. S. Gracey
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C. this 23rd day of November 1984.